FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.493 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.Subhash Dhadge for the petitioner

Mr.A.S.Shitole, APP for the State.

Coram : R.S.Mohite,J

Date : 14.3.2006.

PC

1. This is a petition impugning orders passed by the lower Courts issuing process in the complaint under Section 138 of N.I.Act. The point that is sought to be argued is that in the complaint the present petitioner is shown as a Proprietor of an organisation known as 'Commercial Food Services'. The contention is that the petitioner is not the proprietor but the partner. I have perused the complaint. There is an averment in the complaint

that the present petitioner is a Proprietor and accused no.3 Sitaram Shetty is the authorised person and is looking after the business on behalf of the petitioner. There is a further averment that the catering service is being run by the petitioner as well as Sitaram Shetty since 1994. Perusal of the provisions of Section 141 of the N.I.Act indicates that the person in charge of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The term company is very widely defined in the explanation to Section 141(2) and includes an association of persons. In my view, the question as to whether the petitioner is a Proprietor or not is a question of fact. Even assuming that he was a partner, he cannot escape from the liability. All these matters which will have to be gone into the trial. In the circumstances,

I am not inclined to entertain the petition. Petition is therefore, dismissed. It is made clear that any observations made here-in will not be used at the time of the trial.

(R.S.Mohite,J)